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July 12, 2021

**Via Email**

Mag. J. Jonathan W. Feldman  
U.S. Magistrate Judge, U.S. Courthouse  
100 State Street  
Rochester, NY 14614

Re: ***Horn v. Medical Marijuana, Inc., et al.***  
**Case No: 15-CV-701 (FPG-MJR)**

Dear Judge Feldman and Counsel:

We represent Plaintiff in this matter.

From the Final Pre-Trial Conference and Defendants' continued objections to the authentication Plaintiff's Exhibits, I write in advance of trial again to try to save time on Day 1 of trial with respect to the Defendants' evidentiary positions.

First, as to Defendants' Exhibit #418, the Medtox Lab report, I believe I told the Court this was a "Level 1" stipulation. That was incorrect. As to that proposed Exhibit by Defendants, I have to change the designation to a "Level 2" as Plaintiff wishes to dispute the relevance of this document.

Second, from the Pre-Trial Conference, I must seek greater clarification as to how to handle Plaintiff's current Exhibit #4, the FAQs from the Dixiex website, (i.e. the subject pages that were removed from the general Internet, but captured in the Internet Archive). Defendants designated this a "Level 3" objection meaning that they will also contest its authentication. At the Conference, the parties had a discussion as to the Affidavit from Elizabeth Rosenberg, Records Request Processor from the Internet Archive (the "Wayback Machine"). This was the Affidavit I submitted on 10/23/20 (at Doc #151-2) in opposition to Defendants' Motions in Limine, and which I attach here.

I must seek greater clarification as to whether I will have the "burden of producing an unnecessary witness"<sup>1</sup> simply for the purpose of authenticating this Exhibit, and will the Court rule as it did with the Clinical Reference Laboratory Report, Plaintiff's Exhibit #7. I am in the position of requesting the Court to again consider Ms. Rosenberg's Affidavit as a Court Exhibit simply for ruling on authentication as to the FAQs. Otherwise, I will have to seek to produce her as an additional witness which I believe would be needlessly costly and time-consuming.

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<sup>1</sup> From the Court's Final Pre-Trial Conference Order at Doc #174, page 7, ruling on Plaintiff's Exhibit #7, the subject urinalysis from the Clinical Reference Laboratory as authenticated.

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Moreover, defense counsel rightly pointed out that the Exhibit #4 was missing its last pages. As such, I must also request to replace what I produced previously with that which was attached to Ms. Rosenberg's Affidavit as a complete and clear copy of the entire Exhibit.

Perhaps we can discuss these issues at the oral argument for the motions on July 14, 2021.

Very truly yours,

*Jeffrey Benjamin*

Jeffrey Benjamin, Esq.

cc: All parties via Email